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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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May 7, 2009

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The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Dear Administrator Jackson:

We write to request information related to a closed criminal case, U.S. v. Anne Masters Sholtz, CR 05-17-ABC, resulting from an investigation conducted in part by the EPA's Criminal Investigation Division. The case arises from fraud in the sale of counterfeit pollution credits in an emissions trading program established by the South Coast Air Quality Management District pursuant to EPA regulation and known as the Regional Clean Air Incentives Market (RECLAIM) program. EPA's public website lists RECLAIM as a cap-and-trade program (see <http://www.epa.gov/captrade/programs.html>).

We believe this case has great relevance in the context of pending legislation on climate change. It is important that Congress assess not only whether EPA has an adequate regulatory regime and surveillance capacity over pollution credit trading but also whether there are any factors (e.g., resources, legal restrictions) constraining federal law enforcement in combating criminal cap-and-trade fraud.

According to a Department of Justice press release dated June 20, 2004, Ms. Anne Masters Sholtz was arrested by federal agents, and a criminal complaint was filed accusing Ms. Sholtz of seven counts of wire fraud. The affidavit in support of the complaint outlined a scheme in which Ms. Sholtz used forged documents and her knowledge of trading pollution credits to defraud AG Clean Air, a New York-based company that traded in energy credits. About six months after her arrest, Ms. Sholtz was indicted on six counts of wire fraud in January 2005.

The attached Department of Justice press release, dated April 26, 2005, indicates Ms. Sholtz pled guilty to one count of wire fraud, a charge that under sentencing guidelines carried a

potential penalty of five years in federal prison. By entering this plea, Ms. Sholtz admitted involvement in a scheme in which she defrauded AG Clean Air through the use of forged documents and other documentation. In particular, she operated an Internet site called the Automated Credit Exchange (ACE) which was a forum for companies to trade and sell RECLAIM Trading Credits (RTCs). On Ms. Sholtz's representations that Mobil Corporation (now ExxonMobil Corporation) needed to buy a large quantity of RTCs for use at a Southern California refinery, AG Clean Air purchased \$12.5 million worth of RTCs over two years. Ms. Sholtz represented that Mobil would purchase those RTCs for \$17.5 million. As part of her scheme, Ms. Sholtz sent faxes and e-mails to AG Clean Air that purported to document negotiations between ACE and Mobil Corporation, including a purchase and sale agreement with a forged signature.

As noted by the EPA Regional Administrator in his January 24, 2008 letter to U.S. District Court Judge Audrey B. Collins (see attached), "The crimes committed by Ms. Sholtz in creating and selling counterfeit credits threaten the integrity of the RECLAIM program as a mechanism to reduce air pollution in the Los Angeles air basin as the credits she created did not represent genuine emission reductions. Her crimes thus have the potential to undermine confidence, not only in RECLAIM itself, but in all environmental regulatory programs which use market mechanisms.... Much of the proposed climate change legislation currently before Congress would create 'cap and trade' market mechanisms which would be very similar to the RECLAIM program. Individuals who would illegally attack the integrity of such programs for illegitimate personal gain must be deterred from such activity."

Although she was indicted on six counts of wire fraud felonies, Ms. Sholtz pled guilty to just one count in April 2005 and received no punishment for approximately three years until she was sentenced in April 2008. Ms. Sholtz was eventually sentenced to only five years of probation and a single year of home detention. She received no prison sentence. The prosecutor even reportedly noted, "I [have] been prosecuting environmental crimes for eighteen years and this stands out as the single exception to pleading a defendant out to your most significant count . . . I [have] never had a case . . . when the obvious strategy was [not] the winning one . . . We see this as a prison case."

Given Congress is currently considering broad proposed cap-and-trade legislation that would require EPA to establish a major national and international emissions trading program, we are writing to request information concerning this case and EPA's oversight of the RECLAIM pollution credit trading market. We are concerned with the difficulties that EPA and other federal authorities have in preventing, investigating, and/or prosecuting fraud in relatively small pollution credit trading markets, and how EPA would help ensure the integrity of a proposed cap-and-trade market that would be enormous in scale. Further, because so many of the documents remain under seal in this case, we have very limited information concerning the case and accordingly are writing to request further information. Please provide the following information within two weeks of receipt of this letter:

1. Please describe EPA's regulatory oversight activities relating to the RECLAIM program since RECLAIM went into effect. Has EPA made any changes to its oversight activities of the RECLAIM program? If so, were any of these changes the result of the Sholtz case?

2. When and how did the EPA come to learn about the allegations against Ms. Sholtz of potential criminal misconduct? What are the procedures and mechanisms in place for EPA to ensure the integrity of the RECLAIM program?
3. According to a June 25, 2004, article in Inside EPA, officials at the U.S. Attorney's office and EPA Region IX estimated that the investigation of Ms. Sholtz at the time of her arrest had cost upwards of \$80 million. How much did the investigation and prosecution of Sholtz ultimately cost the federal government? How much did the EPA spend in all its activities in support of the Sholtz case?
4. How much money was Ms. Sholtz alleged to have defrauded victims in connection with the RECLAIM program? How many EPA criminal investigators were involved in investigating the Sholtz case? How much time and resources does the EPA currently assign to monitoring and detecting fraud in connection with the RECLAIM program?
5. Does EPA have sufficient authority and resources to monitor and deter fraudulent conduct in the RECLAIM program?
6. There was a three-year gap between Ms. Sholtz's guilty plea in 2005 and her sentencing in 2008. Why was there such a delay in the sentencing phase?
7. Are there any other filed EPA criminal cases involving emissions trading programs, including the RECLAIM program? Please identify and describe the status of those cases, including any settlements or judgments.
8. According to a June 25, 2004, article in Inside EPA, an EPA air official reportedly said that illegal activity similar to the Sholtz case "may have already occurred in other programs without being investigated." This source reportedly said, "There should have been similar cases in New Jersey, but everyone agreed to just close up shop." Does EPA agree that there were similar cases of illegal activity that EPA was unable to investigate? If so, why?
9. Are there mechanisms in place to ensure that individuals who have engaged in fraudulent conduct relating to the RECLAIM program are prevented from participating in the future in emissions trading markets? Has Ms. Sholtz been prohibited from future trading involving the RECLAIM program and/or from any other emission trading programs established under EPA regulations? Does EPA keep a list of groups or individuals debarred from participating in emissions trading programs or bidding for government contracts? If not, why not? Is the list available to the public? If not, why not? Under what circumstances does the EPA begin the debarment process? Has Ms. Sholtz been debarred from participating in any emission trading programs or bidding for any Government contracts?
10. Why were so many of the documents (including the sentencing hearing transcript) in the criminal proceeding involving Ms. Sholtz placed under seal? Does the government plan to request that the documents be unsealed? If not, how can these documents be unsealed?


11. EPA's public website provides press releases about the sentencing of defendants in EPA criminal cases. However, it does not appear that EPA has posted any information on its public website about the sentence in the Sholtz case. Why?

Given the timeliness of these issues, please contact Alan Slobodin of the Minority Committee staff at (202) 225-3641 on any questions involving the EPA response letter. Your prompt attention to this request is appreciated.

Sincerely,



Joe Barton  
Ranking Member



Greg Walden  
Ranking Member  
Subcommittee on Oversight and Investigations

Attachments

cc: The Honorable Henry Waxman, Chairman  
The Honorable Bart Stupak, Chairman  
Subcommittee on Oversight and Investigations